

**REMARKS**

Applicants thank the Examiner for receipt and entry of the previously submitted amendments. Claims 1, 3, 4, 6, 19-21, and 31-58 were pending in the application.

The Examiner has withdrawn claims 32-35, 40-51, 54 and 56-58 from consideration. The Examiner has rejected claims 1, 3, 4, 6, 19-21, 31, 36-39, 52, 53 and 55 under 35 U.S.C. § 112, first paragraph. The Examiner has also rejected claims 19-21, 31, 36-39, 53 and 55 under 35 U.S.C. § 112, second paragraph.

Claims 44-51, 57, and 58 are cancelled. Claims 1, 4, 6, 19, 21, 31, 34-36, 38, 39, 42 and 43 have been amended.

**Status of the Claims**

The Examiner has withdrawn claims 32-35, 40-51, and 54 from consideration as allegedly being directed towards a non-elected invention that is separate and distinct from the subject matter presented in claims 1, 3, 4, 6, 19-21, and 31.

Claims 1, 3, 4, 6, 19-21, and 31 are directed towards a modified peptide and compositions thereof. Claims 32-35 and 54 are directed towards a conjugated peptide. Claims 40-43 are directed towards a composition comprising the conjugated peptide. Claims 44-51, 57 and 58 are directed towards a method of treatment for human immunodeficiency virus (HIV) infection.

The Examiner has stated that since the Applicants have received an action on the merits for the previously presented claims, claims to the modified peptide were constructively elected by Applicants.

In the interests of efficiency, but without prejudice, Applicants have cancelled claims 44-51, 57 and 58, which are directed towards a method of treating human immunodeficiency (HIV) virus infection. However, Applicants respectfully submit that the Examiner's constructive restriction of composition claims 32-35, 40-43, and 54 from the previously presented composition claims is

improper. Applicants also respectfully note, that while the Office Action Summary states that claim 56-58 are withdrawn, the Examiner has failed to give a reason for not considering them. Applicants also assert that similarly, composition claim 56 is properly included with the present claims. Reconsideration is respectfully requested for the following reasons.

Claims 32-35, 40-43, 54, and 56

Claim 32 and dependent claims 33-35, and 54 are directed towards a conjugated peptide comprising the modified antiviral peptide of claim 1 and its dependent claims, covalently bonded to a blood component. Similarly, claim 40 and dependent claims 41-43 and 56 are directed towards a composition comprising the peptide of claim 31 in conjugated form. The Examiner has stated that these “product claims are directed towards conjugated peptides with different structural features and attendant biochemical activities” than the previously submitted peptide claims.

Applicants respectfully disagree. Previously submitted claims 1, 3, 4, 6, 19, 20, and 21 are directed towards a modified anti-viral peptide. The relationship between these previously submitted peptide claims and the conjugated peptide of claims 32 -25, 40-43, 54, and 56, is that of intermediate to final product. Administration of the modified peptide of claims 1, 3, 4, 6, 19, 20, and 21 in a human subject leads to its *in vivo* bioconjugation to a blood component, leading naturally to the conjugated peptide of claims 32-35, 40-43, 54, and 56.

Although the Examiner is correct in stating that different structural features exist between the conjugate and the modified peptide, these respective structures are closely related since only the presence of the blood component differs, and this reaction occurs naturally once the peptide is administered into the blood stream. However, in contrast to the Examiner’s position, the modified peptide and the conjugate have similar, not “different” attendant biochemical activities. Both have the same therapeutic activities and both are intended for the same uses - anti-viral treatment. Restriction is therefore improper. See MPEP § 806.04. In light of the above, Applicants respectfully request that the Examiner withdraw the constructive restriction requirement and consider claims 32-35, 40-43, 54, and 56.

**35 U.S.C. § 112, Second Paragraph**

The Examiner has rejected claims 19-21, 31, 36-39, 53 and 55 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. These claims have been rejected by the Examiner for being directed towards a “composition” but containing only a single component peptide. As amended, these claims are now directed to the claimed peptide “in a physiologically acceptable medium.” Support for the amendment exists, e.g. on page 42, lines 2-5 of the specification. In light of the above, Applicants request withdrawal of the rejection to claims 19-21, 31, 36-39, 53 and 55.

Additionally, Applicants have amended claims 1, 6, 19, 31, 35 and 43 to remove the “and” between “SEQ ID 4” and “SEQ ID 5.” This amendment was merely to correct a typographical error and is unrelated to patentability.

**35 U.S.C. § 112, First Paragraph**

The Examiner has rejected claims 1, 3, 4, 6, 19-21, 31, 36-39, 52, 53 and 55 under 35 U.S.C. § 112, first paragraph because the specification does not reasonably enable any person skilled in the art to which it pertains to make and /or use the invention commensurate in scope with these claims. Specifically, the Examiner has raised concerns with the terminology of recited antiviral peptides “comprising” the amino acid sequences indicated SEQ ID NOS. In the interests of efficiency, but without acquiescing to the merits of the rejection, the indicated claims have been amended to indicate that the amino acid sequences of the recited peptides are those of the recited SEQ ID NOS.

Amendment and cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented, and Applicants reserve the right to prosecute the subject matter of such claims in continuation and/or divisional applications.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. **500862001520**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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